

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred House
3 Bill No. 644 entitled “An act relating to access to records by individuals who
4 were in foster care” respectfully reports that it has considered the same and
5 recommends that the Senate propose to the House that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

8 Sec. 1. 33 V.S.A. § 4921 is amended to read:

9 § 4921. DEPARTMENT’S RECORDS OF ABUSE AND NEGLECT

10 (a) Record maintenance and disclosure generally. The Commissioner shall
11 maintain all records of all investigations, assessments, reviews, and responses
12 initiated under this subchapter. The Department may use and disclose
13 information from such records in the usual course of its business, including to
14 assess future risk to children, to provide appropriate services to the child or
15 members of the child’s family, or for other legal purposes.

16 (b) Duty to inform parents or guardians. The Commissioner shall promptly
17 inform the parents, if known, or guardian of the child that a report has been
18 accepted as a valid allegation pursuant to subsection 4915(b) of this title and
19 the Department’s response to the report. The Department shall inform the
20 parent or guardian of ~~his or her~~ the parent’s or guardian’s ability to request

1 records pursuant to subsection (c) of this section. This section shall not apply
2 if the parent or guardian is the subject of the investigation.

3 (c) Disclosure of redacted investigation files. Upon request, the redacted
4 investigation file shall be disclosed to:

5 (1) the child’s parents, foster parent, or guardian, absent good cause
6 shown by the Department, provided that the child’s parent, foster parent, or
7 guardian is not the subject of the investigation;

8 (2) the person alleged to have abused or neglected the child, as provided
9 for in subsection 4916a(d) of this title; and

10 (3) the attorney representing the child in a child custody proceeding in
11 the Family Division of the Superior Court.

12 (d) Disclosure of records created by the Department. Upon request,
13 Department records created under this subchapter shall be disclosed to:

14 (1) the court, parties to the juvenile proceeding, and the child’s guardian
15 ad litem if there is a pending juvenile proceeding or if the child is in the
16 custody of the Commissioner;

17 (2) the Commissioner or person designated by the Commissioner to
18 receive such records;

19 (3) persons assigned by the Commissioner to conduct investigations;

20 (4) law enforcement officers engaged in a joint investigation with the
21 Department, an Assistant Attorney General, or a State’s Attorney;

1 (5) other State agencies conducting related inquiries or proceedings; ~~and~~

2 (6) the Office of the Child, Youth, and Family Advocate for the purpose
3 of carrying out the provisions in chapter 32 of this title; and

4 (e)(1) Disclosure of relevant Department records or information. Upon
5 request, relevant Department records or information created under this
6 subchapter shall be disclosed to:

7 (A) a person, agency, or organization, including a multidisciplinary
8 team empaneled under section 4917 of this title, authorized to diagnose, care
9 for, treat, or supervise a child or family who is the subject of a report or record
10 created under this subchapter, or who is responsible for the child’s health or
11 welfare;

12 (B) health and mental health care providers working directly with the
13 child or family who is the subject of the report or record;

14 (C) educators working directly with the child or family who is the
15 subject of the report or record;

16 (D) licensed or approved foster caregivers for the child;

17 (E) mandated reporters as defined by section 4913 of this subchapter,
18 making a report in accordance with the provisions of section 4914 of this
19 subchapter and engaging in an ongoing working relationship with the child or
20 family who is the subject of the report;

1 (F) a Family Division of the Superior Court involved in any
2 proceeding in which:

3 (i) custody of a child or parent-child contact is at issue pursuant to
4 15 V.S.A. chapter 11, subchapter 3A;

5 (ii) a parent of a child challenges a presumption of parentage
6 under 15C V.S.A. § 402(b)(3); or

7 (iii) a parent of a child contests an allegation that he or she
8 fostered or supported a bonded and dependent relationship between the child
9 and a person seeking to be adjudicated a de facto parent under 15C V.S.A. §
10 501(a)(2);

11 (G) a Probate Division of the Superior Court involved in
12 guardianship proceedings; and

13 (H) other governmental entities for purposes of child protection.

14 (2) Determinations of relevancy shall be made by the Department.

15 (3) In providing records or information under this subsection, the
16 Department may withhold:

17 (A) information that could compromise the safety of the reporter or
18 the child or family who is the subject of the report; or

19 (B) specific details that could cause the child to experience
20 significant mental or emotional stress.

1 (4) In providing records or information under this section, the
2 Department may also provide other records related to its child protection
3 activities for the child.

4 (5) Any persons or agencies authorized to receive confidential
5 information under this section may share such information with other persons
6 or agencies authorized to receive confidential information under this section
7 for the purposes of providing services and benefits to the children and families
8 those persons or agencies mutually serve.

9 (f) Disclosure to prevent harm. Upon request, relevant Department
10 information created under this subchapter may be disclosed to a parent with a
11 reasonable concern that an individual who is residing at least part time with the
12 parent requestor’s child presents a risk of abuse or neglect to the requestor’s
13 child. As it is used in this subsection, “relevant Department information” shall
14 mean information regarding the individual that the Department determines
15 could avert the risk of harm presented by the individual to the requestor’s
16 child. If the Department denies the request for information, the requestor may
17 petition the Family Division of the Superior Court, which may, after weighing
18 the privacy concerns of the individuals involved with the parent’s right to
19 protect his or her child, order the release of the information.

20 (g) Disclosure to adults that were subject to foster care placement.

1 (1) It is the intent of the General Assembly that it be the policy of the
2 State that:

3 (A) adults who were subject to placement in State foster care,
4 institutions, and other systemic placements have a statutory right to access
5 their own records in order to more fully understand their own personal stories,
6 including their health, education, family, and other histories; access healing in
7 their chosen way; and be recognized and trusted as legitimate custodians of
8 their own information;

9 (B) the Department make good faith efforts to disclose such records
10 in the broadest form permitted under applicable federal or State law in order to
11 assist with the administration of Vermont’s state plan for foster care and
12 establishing eligibility for programs or services; and

13 (C) any disclosures made by the Department that are prohibited by
14 applicable federal or State law be construed as good faith efforts of the
15 Department to comply with the State’s policy and statutory scheme.

16 (2) Upon request, Department records created under this subchapter shall
17 be disclosed, at no cost, to an individual who meets the following criteria, to
18 the extent permitted by federal or State law:

19 (A) the individual is the subject of the records requested;

20 (B) the individual is 18 years of age or older; and

1 (C) as a minor, the individual was in foster care or subject to any
2 juvenile judicial proceeding under this title.

3 (3) In providing records or information pursuant to this subsection, the
4 Department may withhold or redact the following:

5 (A) identifying information about any person, other than the subject,
6 in which there is a substantial likelihood that a person’s safety would be
7 compromised if disclosed;

8 (B) information that creates a substantial likelihood that would
9 compromise an active law enforcement investigation; or

10 (C) reports or investigatory records about the subject of the record
11 request in which there is a formal allegation that the subject committed an act
12 of abuse or neglect.

13 ~~(g)~~(h) Penalty. Any records or information disclosed under this section and
14 information relating to the contents of those records or reports shall not be
15 disseminated by the receiving persons or agencies to any persons or agencies,
16 other than to those persons or agencies authorized to receive information
17 pursuant to this section. A person who intentionally violates the
18 confidentiality provisions of this section shall be fined not more than
19 \$2,000.00.

20 Sec. 2. 33 V.S.A. § 5117 is amended to read:

21 § 5117. RECORDS OF JUVENILE JUDICIAL PROCEEDINGS

1 (a) Except as otherwise provided, court and law enforcement reports and
2 files concerning a person subject to the jurisdiction of the court shall be
3 maintained separate from the records and files of other persons. Unless a
4 charge of delinquency is transferred for criminal prosecution under chapter 52
5 of this title or the court otherwise orders in the interests of the child, such
6 records and files shall not be open to public inspection nor their contents
7 disclosed to the public by any person. However, upon a finding that a child is
8 a delinquent child by reason of commission of a delinquent act that would have
9 been a felony if committed by an adult, the court, upon request of the victim,
10 shall make the child's name available to the victim of the delinquent act. If the
11 victim is incompetent or deceased, the child's name shall be released, upon
12 request, to the victim's guardian or next of kin.

13 (b)(1) Notwithstanding ~~the foregoing~~ subsection (a) of this section,
14 inspection of ~~such~~ the records and files by or dissemination of ~~such~~ the records
15 and files to the following is not prohibited:

16 (A) a court having the child before it in any juvenile judicial
17 proceeding;

18 (B) the officers of public institutions or agencies to whom the child is
19 committed as a delinquent child;

20 (C) a court in which a person is convicted of a criminal offense for
21 the purpose of imposing sentence upon or supervising the person, or by

1 officials of penal institutions and other penal facilities to which the person is
2 committed, or by a parole board in considering the person's parole or discharge
3 or in exercising supervision over the person;

4 (D) the parties to the proceeding, court personnel, the State's
5 Attorney or other prosecutor authorized to prosecute criminal or juvenile cases
6 under State law, the child's guardian ad litem, the attorneys for the parties,
7 probation officers, and law enforcement officers who are actively participating
8 in criminal or juvenile proceedings involving the child;

9 (E) the child who is the subject of the proceeding, the child's parents,
10 guardian, and custodian may inspect ~~such~~ the records and files upon approval
11 of ~~the Family~~ a Superior Court judge;

12 (F) any other person who has a need to know may be designated by
13 order of the Family Division of the Superior Court;

14 (G) the Commissioner of Corrections if the information would be
15 helpful in preparing a presentence report, in determining placement, or in
16 developing a treatment plan for a person convicted of a sex offense that
17 requires registration pursuant to 13 V.S.A. chapter 167, subchapter 3;

18 (H) the Human Services Board and the Commissioner's Registry
19 Review Unit in processes required under chapter 49 of this title;

20 (I) the Department for Children and Families;

1 (J) the Office of the Child, Youth, and Family Advocate for the
2 purpose of carrying out the provisions in chapter 32 of this title;

3 (K) a service provider named in a disposition order adopted by the
4 court, or retained by or contracted with a party to fulfill the objectives of the
5 disposition order, including referrals for treatment and placement;

6 (L) a court diversion program or youth-appropriate community-based
7 provider to whom the child is referred by the State's Attorney or the court, if
8 the child accepts the referral; ~~and~~

9 (M) other State agencies, treatment programs, service providers, or
10 those providing direct support to the youth, for the purpose of providing
11 supervision or treatment to the youth; and

12 (N) an individual who:

13 (i) is the subject of the records sought by the request;

14 (ii) is 18 years of age or older; and

15 (iii) as a minor, was subject to any juvenile judicial proceeding
16 under this title.

17 (2) Files inspected under this subsection shall be marked: UNLAWFUL
18 DISSEMINATION OF THIS INFORMATION IS A CRIME PUNISHABLE
19 BY A FINE UP TO \$2,000.00.

20 * * *

1 Sec. 3. EFFECTIVE DATE

2 This act shall take effect on passage.

3

4

5

6 (Committee vote: _____)

7

8

Senator _____

9

FOR THE COMMITTEE